

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 3646 - HB 3694

February 28, 2012

SUMMARY OF BILL: Creates the *Tennessee Non-Conforming Property Act*. This *Act* authorizes any non-conforming property to expand its pre-existing use and conduct on the land and construct additional facilities provided reasonable space exists for such expansion as to avoid nuisances to adjoining landowners. Requires that no permit or similar authorization to expand be denied by a municipality. Such property also has the authority to destroy, in part or whole, present facilities and replace or construct new facilities if such replacement or reconstruction will not increase the pre-existing size, scope, and nature of the continued conduct on the land. Requires that no permit or similar authorization to destroy and subsequently replace or construct new facilities be denied. Requires any non-conforming property which is destroyed in whole by the owner for the purpose of redevelopment that increases the pre-existing size, scope, and nature of the continued conduct on the land to comply with the front, rear, and side setbacks, if applicable and no other zoning or development regulations shall apply.

All property rights protected in this part shall continue indefinitely unless the owner intentionally and voluntarily abandons or changes the use of and conduct on the property. Discontinuation of the use of or conduct on such property does not constitute abandonment unless the owner of the property intentionally and voluntarily intends to abandon. Local government has the burden of proof regarding a non-conforming property owner's intentional and voluntary abandonment of such property.

This *Act* applies to all local governments except for any municipality defined as a premier type tourist resort according to Tenn. Code Ann. §67-6-103(a)(3)(B) or any municipality governed by a home rule charter. Furthermore, this *Act* applies only to property containing the nonconforming use or conduct of the owner and does not permit expansion through the acquisition of additional property.

Requires any off-site sign, or any sign that advertises or gives direction to any business, product, service, attraction, or any other purpose or interest off the premises other than the establishments located on the site where the sign is located, to follow certain size requirements.

Provides means for the Nashville-Davidson County metropolitan government to terminate certain non-conforming motor vehicle businesses. Prior to enacting any new zoning regulations that will create a new nonconforming property; a local government is required to send notice by certified mail to the owners of such property. Requires any board of appeal's decision that a property is not legally non-conforming to be based on clear and convincing evidence, with a written list of facts justifying such conclusion. Any property owner who sues a local government to validate property owned as legally non-conforming is entitled to recover legal fees in the same manner as provided in the *Equal Access to Justice Act of 1984*.

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ESTIMATED FISCAL IMPACT:

Increase State Revenue – Not Significant

Increase State Expenditures – Not Significant

Increase Local Revenue –Not Significant

Increase Local Expenditures - \$1,399,500*

Assumptions:

- Pursuant to Tenn. Code Ann. §13-7-208 (b)(1), industrial, commercial, and business establishments are permitted to operate under zoning regulations enacted prior to zoning changes, provided that there is no change in the use of land.
- According to the Department of Commerce & Insurance, fire codes will not be affected by the proposed legislation; therefore, current departmental practices will not change.
- According to a 2011 report by the Tennessee Advisory Commission on Intergovernmental Relations (TACIR), *Land Use and Planning in Tennessee; Part II: Land Use and Transportation Planning*, in 2010, 48 counties and 273 municipalities enacted zoning ordinances. Many of these zoning ordinances result in property becoming non-conforming.
- In 2011, the Davidson County board of appeals heard 133 cases. In such cases, the appellant won approximately 72 percent or 95 of such appeals.
- According to the 2010 federal census, the population of Davidson County was 626,681 or roughly 10 percent of the population of Tennessee (6,346,105).
- For purposes of estimation, there are approximately 1,330 (133/10%) zoning appeals statewide brought to local boards in the state annually.
- It is estimated that 40 percent or 532 appeals will be brought before a court annually as a result of zoning ordinance declaring property non-conforming.
- It is estimated 72 percent or 383 appellants will win cases against the respective local government.
- This proposed legislation requires such appeals to be in accordance with the *Equal Access to Justice Act of 1984*, Tenn. Code Ann. § 29-37-101 (a)(1), which requires local governments to pay the attorneys fees of any prevailing appellant up to \$10,000.
- The average cost of a lawyer in appealing a zoning regulation is approximately \$3,650.
- Paying such attorneys' fees will result in an increase in local government expenditures of \$1,397,950 (\$3,650 x 383).
- The local governments will be required to notify the property owners of such zoning changes that renders their property non-conforming.
- Certified mail costs approximately \$2.95 per envelope. Notifying the appropriate property owners will result in an increase in local expenditures of \$1,569.40 (\$2.95 x 532 non-conforming properties).

- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" and last name "Geise" clearly distinguishable.

Lucian D. Geise, Executive Director

/jdb